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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Development of Operational,)
Technical and Spectrum Requirements) WT Docket No. 96-86
For Meeting Federal, State and Local)
Public Safety Agency Communication)
Requirements Through the Year 2010)
)
Establishment of Rules and Requirements)
For Priority Access Service)

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Vice President
and Chief Regulatory Officer

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
1450 G. Street, N.W.
Suite 425
Washington, D.C. 20005
202-296-8111

Date: January 26, 1998

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I. INTRODUCTION

Pursuant to Section 1.429 of the Rules of the Federal Communications Commission ("Commission") and the Second Notice Of Proposed Rule Making ("Notice") in the above-captioned proceeding,^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments.

On December 22, 1997, a number of parties filed comments addressing various issues raised in the Notice. Nextel limits its Reply Comments to (1) supporting voluntary priority access service on Commercial Mobile Radio Service ("CMRS") systems; and (2) supporting a broader definition of "public safety" for purposes of determining eligibility to provide services on the Commission's recently allocated 24 MHz of Public Safety spectrum.

^{1/} Second Notice Of Proposed Rule Making, WT Docket No. 96-86, FCC 97-373, released October 24, 1997.

II. DISCUSSION

A. The Commission Should Permit CMRS Priority Access Services On A Voluntary Basis

None of the commenters support imposing a priority access service mandate, requiring CMRS carriers to offer priority access to public safety entities. Those commenters opposing such a mandate include not only all of the commenting CMRS carriers, but also the National Communications System ("NCS"), which initially sought a Commission rule making on the issue.^{2/} According to the commenters, and consistent with Nextel's comments herein, there is no evidence to support a priority access mandate,^{3/} the additional spectrum allocation for public safety potentially could reduce public safety reliance on commercial systems,^{4/} and the additional spectrum that has been allocated to CMRS carriers should reduce the likelihood of congestion on commercial systems during emergencies.^{5/}

A mandate, as Nextel stated in its Comments, is premature at this time, given the lack of evidence to support priority access and the uncertain impact of an additional 24 MHz of Public Safety spectrum. As NCS noted, because the additional public safety

^{2/} See Comments of NCS at p. 5, supporting voluntary priority access services by CMRS carriers.

^{3/} Comments of Southwestern Bell Mobile Systems, Inc. ("Southwestern Bell") at 2; Personal Communications Industry Association ("PCIA") at 3; and NCS at 4.

^{4/} Comments of Southwestern Bell at 2; NCS at 4; Bell Atlantic Mobile Systems, Inc. ("Bell Atlantic") at 6.

^{5/} Comments of Southwestern Bell at 2.

spectrum was just allocated, it is too early to know whether or not and to what extent public safety entities will need supplemental commercial services in the future.^{6/} Therefore, rather than mandating priority access services at this time, the Commission should allow the marketplace to determine whether or not it is needed by public safety entities.

Additionally, a priority access mandate would be premature given the state of priority access technologies. As Southwestern Bell noted in its comments, not all CMRS systems are capable of providing priority access services today.^{7/} Moreover, it is not clear whether those systems will have this capability in the near future.^{8/} Therefore, carriers should not be forced to invest significant resources to upgrade their systems to provide this service, particularly when no real demand has been demonstrated. Finally, a priority access mandate would require the establishment of a cost recovery program to ensure that CMRS carriers are compensated for costly system upgrades.^{9/} Such mechanisms have proven complex and time-consuming to implement and administer.^{10/} Accordingly, the Commission should allow priority access services on a voluntary basis and impose the costs on the

^{6/} Comments of NCS at 4.

^{7/} Comments of Southwestern Bell at 2.

^{8/} *Id.*

^{9/} Comments of Southwestern Bell at 2; 360 Communications Corp. at 2-3.

^{10/} Comment of 360 Communications Corp. at 2-3.

cost-causer, i.e., the public safety entity using the service.^{11/}

B. To Make Voluntary Priority Access Possible, the Commission Must Establish Specific Standards and Protect CMRS Carriers From Liability Under Section 202

If priority access services are to be available to public safety agencies -- even on a voluntary basis -- the Commission must establish specific nationwide standards for implementing the service. These standards must include the establishment of specific priority levels and an absolute defense to discrimination complaints arising under Section 202 of the Communications Act of 1934, as amended.^{12/} The Commission should establish specific priority levels to be followed by all CMRS carriers offering priority access services. These priorities, moreover, should include non-governmental agencies as well as governmental agencies. As Florida Power & Light stated, the Commission should permit priority access to a CMRS system during an emergency for those entities that, although not government agencies, provide emergency services to the community.^{13/}

Established priority levels must be in place before a CMRS carrier can begin to offer priority access services because, without them, CMRS carriers could be caught in the middle of disputes among public safety entities regarding their particular

^{11/} See Comments of NCS at 5; GTE Service Corp. at 11.

^{12/} 47 U.S.C. Section 202.

^{13/} Comments of Florida Power & Light at 3; see also American Petroleum Institute at 8.

priority level. The potential for such disputes is foreshadowed in some of the comments filed herein. For example, the California Public Safety Radio Association, in its comments, requests that the Commission provide state and local governments the same level of priority that will be afforded federal agencies.^{14/} Bell Atlantic opposes the provision of priority access services based on, among other things, the difficulties in establishing appropriate priority levels.^{15/} Although establishing priorities may be complex, this is precisely the reason that the Commission should promulgate priority levels on a nationwide, industry-wide basis.

Additionally, providing carriers a defense to discrimination claims under Section 202 of the Act is critical to the success of priority access services. If carriers are likely to be subjected to discrimination complaints from subscribers on their systems, not entitled to priority access during an emergency, priority access services are unlikely to be offered.^{16/} Thus, the Commission should specify that the provision of priority access to public safety and other eligible entities during certain emergency situations does not violate the non-discrimination requirements of Section 202 of the Act.

^{14/} Comments of California Public Safety Radio Association at 6; see also Comments of Long Beach, California at 6.

^{15/} Comments of Bell Atlantic at 10. Bell Atlantic also points out the difficulty in establishing a particular prioritization that would fit every type of disaster, noting that each disaster is different and requires a differing set of public safety agencies.

^{16/} See Comments of Southwestern Bell at 4.

C. The Commission Should Broadly Define "Public Safety" For Purposes of Providing Services on the Recently Allocated Public Safety Spectrum

In its Comments herein, Nextel asserted that the Commission should allow commercial entities to provide public safety communications services to public safety agencies using the recently allocated public safety spectrum.^{17/} Such services can be provided consistent with the 1997 Act, and can assist the Commission in realizing its public safety communications goals by promoting competition in the public safety services.^{18/} Consistent with those comments, Nextel agrees with the State of California that the Commission's definition of "public safety" for purposes of operating on the new public safety spectrum is too narrow.^{19/}

The Public Safety Wireless Advisory Committee ("PSWAC"), the State of California noted, provided a broader -- and more realistic -- definition of "public safety" by permitting partnerships between public safety and commercial entities, as well as federal agencies.^{20/} Similarly, the Personal Communications Industry Association ("PCIA") asserts that the Commission should allow public safety-commercial partnerships on the public safety spectrum.^{21/} Nextel supports PCIA's position that public safety

^{17/} Comments of Nextel at 5.

^{18/} *Id.* at 6.

^{19/} See Comments of State of California at para. 34.

^{20/} Comments of State of California at para. 35.

^{21/} Comments of PCIA at 9.

licensees should be allowed to share channels with commercial entities to provide services for the sole or principal purpose of protecting the safety of life, health, or property, and that public safety licensees should be allowed to combine their systems with commercial licensees that are utilizing commercial frequencies in the same band.^{22/} By allowing such public-private partnerships, the Commission would be promoting its goals of competition, interoperability and efficiency.

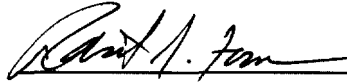
III. CONCLUSION

For the reasons discussed herein, Nextel agrees with the majority of commenters that priority access services should be provided by CMRS carriers on a voluntary basis to qualifying governmental and non-governmental agencies. Additionally, Nextel supports those commenters seeking a broader definition of "public safety" for

^{22/} *Id.*

purposes of providing services on the newly-allocated public safety spectrum.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert S. Foosaner", is written over a horizontal line.

Robert S. Foosaner
Vice President
and Chief Regulatory Officer

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
1450 G. Street, N.W.
Suite 425
Washington, D.C. 20005
202-296-8111

Date: January 26, 1998

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 26th day of January 1998, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

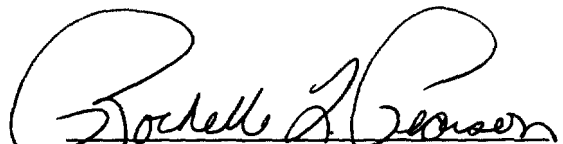
Marty Liebman
Policy Division
Wireless Telecommunication Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Mary Woytek
Policy Division
Wireless Telecommunication Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Ed Jacobs
Policy Division
Wireless Telecommunication Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

David Siehl
Policy Division
Wireless Telecommunication Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Jon Reel
Policy Division
Wireless Telecommunication Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554



Rochelle L. Pearson